

MARRIAGE EQUALITY

Civil Marriage for Gay and Lesbian People



Love, Commitment, Family, Equality.

The case for Marriage Equality in Ireland.

**Marriage Equality's submission to
the Constitutional Convention.**

Contact details:

Moninne Griffith (Director)

Marriage Equality

4th Floor, 2/3 Parnell Square East, Dublin 1

Telephone: (01) 873 4183

Visit our website: www.marriagequality.ie

For a brief description of the organisation and its main activities, see Appendix C.

EXECUTIVE SUMMARY

This submission sets out the case for marriage equality and why we believe Ireland is ready to open up civil marriage to lesbian and gay couples and cherish same sex families equally with heterosexual married families. We look at what marriage means in an Irish context and the world over. **It's about love commitment and protecting your loved ones and carries with it legal, constitutional and social status above any other kind of relationship recognition.**

We look at where we are now in Ireland in terms of equality and family recognition for same sex couples. **We make the case for marriage equality with our main five reasons including (a) marriage is good for families and society, (b) polling shows Ireland is not only ready for it but with $\frac{3}{4}$ of the population saying they support it, there is a wide majority of support to provide for it (74% support), (c) the equality case (equal love, equal marriage) (d) Ireland's international reputation as a progressive country and (e) the business case.**

We also address four of the main concerns that some people have with providing for marriage equality including (a) "it will damage or change marriage" (b) "religious freedom will be affected" (c) "civil partnership is enough for lesbian and gay couples" and (d) "marriage is about only or mainly about procreation".

We are therefore asking members of the Constitutional Convention to recommend that the Government take immediate action to provide for same sex marriage by holding a referendum in which this issue is put to the people of Ireland.

Finally, in order to assist convention members, we have included further information and research in Appendices to this submission.

Appendix A: An outline of research on same sex parenting and the outcomes for their children

Appendix B: A summary of the legal gaps in civil partnership that effect children and parents

Appendix C: A short background to Marriage Equality – who are we and what do we do

Appendix D: A look at where can same sex couples get married and since when

Appendix E: A quick look at what some other organisations working with families, equality and human rights have said on the issue of marriage equality

Appendix F: Real stories: Why Irish people want marriage equality.

The time is now. Irish people are ready to respect and protect diverse families such as those made up of same sex couples with and without children. We are all part of different kinds of families. As members of the Constitutional Convention you have the power to let the people of Ireland change our country for the better.

WHY 'MARRIAGE EQUALITY'?

We use the term 'marriage equality' rather than 'gay marriage' or 'same-sex marriage' because we are not looking for any special or separate kind of marriage. **We don't want to change marriage, which is about love, commitment, caring for and protecting loved ones.** We want to open it up so same sex couples can get married too. We are calling for equality.

What is marriage?

Marriage is a unique legal status conferred by and recognised by governments the world over. It's about love, commitment and protecting loved ones. It brings with it a host of reciprocal obligations, rights and protections. Yet it is more than the sum of its legal parts; it is also a cultural institution. **Being able to use the word itself is hugely important, conveying clearly that you and your life partner love each other.** For many people it represents the ultimate expression of love and commitment between two people, and everyone understands that. **No other word has that power, and no other word can provide that protection.**

In Ireland, the family (with or without children) based in marriage is protected by the Constitution from attack, and must be "guarded with special care". This means that other families (with or without children) do not have this special, elevated and protected status in Irish law.

Civil marriage is not the same as religious marriage. Religious marriage is a ceremony in a church, but it is followed by the signing of the civil marriage register, which is the civil (or legally binding) part. **A civil marriage takes place in a registry office or other approved venue, and has nothing to do with religion.**

To sum up, marriage matters. When you say "We're married", "She's my wife" or "He's my husband" it means that the person you're talking about is the person you've chosen to spend the rest of your life with, and build a future with. **Together.**

Where are we now in Ireland?

Although civil partnership was introduced in 2011 in Ireland and marked an important step in relationship recognition for lesbian, gay, bisexual and transgender people, **it is not the same as marriage and therefore same sex couples, their families and their children are not seen as equal or treated equally by Irish law.** This difference matters on many levels: in society, in law and in day to day existence.

Not allowing same sex couples marry **reinforces the harmful idea that there is something wrong with lesbian and gay people and that they therefore should be treated separately to the rest of the population.** It stigmatises same sex families as less deserving of recognition and protection than other families.

Why marriage?

Marriage is about love, commitment and protecting your loved ones. Here are some of the reasons why marriage equality should be introduced:

1. Marriage is good for people, families and society:

Research shows that marriage is good for people: married people are healthier, happier and earn more. Marriage is also a commitment device – it keeps couples together and families together. It is accepted by the majority of people as good for society e.g. the family unit looks after itself, takes on a caring role for the members of that family and therefore is less dependent on the State for support. Therefore if you believe gay and lesbian people would benefit from marriage and that society would too then why deny these benefits based on sexuality alone?

On top of this, introducing marriage equality is austerity proof. It won't cost the State anything but will improve the lives of thousands of people and arguably improve Irish society in general.

2. Ireland's call:

Ireland is ready. In 2007 56% of Irish people supported marriage equality, now 74% of people do. Providing for marriage equality is a popular measure. The centre of gravity has shifted to support equality for same sex couples. $\frac{3}{4}$ of the population is a solid majority, a remarkable surge and not just a generational change. People across Ireland and across the political spectrum are rethinking their position; evolving like U.S. President Obama, who described his journey to supporting marriage equality:

“I have to tell you that over the course of several years as I have talked to friends and family and neighbours when I think about members of my own staff who are in incredibly committed monogamous relationships, same-sex relationships, who are raising kids together, ...at a certain point I've just concluded that for me personally it is important for me to go ahead and affirm that I think same sex couples should be able to get married.”

Former President Mary McAleese said that lesbian and gay people are **“as entitled to live their lives on their own terms, as I do as a heterosexual,”** ...**“I'm just thrilled anyone wants to get married.”**

Most Irish people think 'not everyone is the same as me, but that's ok – they still deserve equality.' Current polling shows us that:¹

- 74% of people in Ireland support marriage equality for lesbian and gay couples. (September 2012, Millward Brown)
- 75% of people in Ireland would vote in favour of introducing marriage equality if a referendum was held tomorrow (September 2012, Millward Brown)
- 69% of people in Ireland believe that being raised in a loving home by loving parents is a more significant factor for a child's well-being than being raised by a mother and father (September 2012, Millward Brown)
- 73% agree with the principle of marriage equality being written into our Constitution, Bunreacht na hEireann. (February 2012, Red C, poll conducted for the Irish Government).

3. The Equality case:

Irish people believe in equal rights regardless of sexuality (see polling results outlined above). Irish people believe that gay and lesbian people are equal citizens. Personal freedom is a foundation of our democracy, something to be protected, unless of course it harms others. **Gay and lesbian people marrying the person they love will not harm others.** If we really believe gay and lesbian people are equal, then we must allow committed same sex couples marry. This goes to heart of acceptance that it is ok to be lesbian or gay.

84% (more than 8 out of 10) people agree that everyone in Ireland should receive equal treatment from the state, regardless of whether they are lesbian, gay, bisexual, transgender or heterosexual.

Irish people believe that denying civil marriage to same sex couples is discriminatory and unfair. 72% (nearly 3 out of 4) people believe that denying civil marriage to same sex couples is a form of discrimination.

¹ <http://www.marriageequality.ie/getinformed/polling2012.html>

4. It's time: Taking our place amongst the progressive nations

Lesbian and gay couples can marry the person they love in 11 countries (including Spain) and 9 U.S. states. (Further details are set out below in Appendix D) France, England, Wales and New Zealand will legislate to allow for it later this year and Scotland is expected to do so next year. Ireland has a good reputation for equality and human rights internationally. We can be very proud in particular of the work we do on an international stage for rights for lesbian, gay, bisexual and transgender people. For example the State represented by the Minister and officials in Department of Foreign Affairs often champion the rights of LGBT people at the E.U. and U.N. and Belongto (an Irish organisation working to improve the lives of young LGBT people) is a global leader in the fight against homophobic and transphobic bullying². We cannot let Ireland slip behind. Introducing marriage equality here would improve our reputation as champions for human rights and equality and give us standing to continue this important work e.g. fighting against 'Kill the gays' legislation in Uganda.

5. It's good for business

This reputation for being a welcoming country that respects diversity is also good for foreign investment. International companies like setting up in countries where their employees will be protected and treated equally. It leads to better productivity and a greater market reach for them. The 'business case' for marriage equality is well recognised by major U.S. and international companies. Businesses such as Amazon, Starbucks, Ben & Jerry's, Lush, Google, Expedia and Microsoft have publicly stated their support for marriage equality. In fact many large U.S. companies have joined the fight to overturn the federal ban on marriage equality in the U.S. They realise that this issue is not only a social and moral issue – it also has business consequences³.

If companies (and our country) have a 'brand promise' that they are open, welcoming and respectful of diversity, it stands to reason that they should support marriage equality.

Business leaders (e.g. John Taft – Head of RBC Wealth Management) and economists (e.g. Richard Florida) in the US say:

- Supporting equality policies attract and retain quality employees and therefore gives companies a competitive edge when hiring
- As the world gets more diverse, businesses need a more diverse workforce in order to serve clients well
- A work environment that encourages people to be their true selves improves employee engagement, which translates in to employee satisfaction.

2 <http://www.irishtimes.com/newspaper/ireland/2012/0517/1224316239894.html> and <http://www.thejournal.ie/unesco-praises-irish-anti-homophobic-bullying-campaign-as-global-best-practice-303945-Dec2011/>

3 <http://www.nytimes.com/2013/03/02/business/businesses-refuse-to-arrive-late-on-same-sex-marriage.html?pagewanted=all>

WHAT ARE THE CONCERNS ABOUT MARRIAGE EQUALITY?

1. "Tradition/Nature: that marriage equality will damage/change marriage"

- Tradition is not stagnant. It changes over time e.g. women can vote. Terms like 'tradition' and 'natural' are loaded terms. **What is accepted as natural/common sense/commonly held beliefs change overtime.**
- History of marriage in Ireland: Civil marriages were made official in Ireland in 1845, but **non- religious marriages pre-date the churches' religious ceremonies.**⁴ In fact the origin of marriage pre-dates recorded history. **Marriage has changed over time:** In 1870 the ban on Catholics marrying Protestants was lifted. In 1972 the minimum age to marry was raised to 16 years. **In 1996 divorce was introduced.** So we see that the institution of civil marriage has evolved over the years. Tradition has frowned in the past on mixed-race and inter-faith marriages but they happen frequently now in Ireland and represent the way in which marriage is a changing institution reflecting the changes in our society and its traditions.

Lifting the marriage ban for same sex couples will not damage the institution of marriage. Since 1996 the number of marriages each year has risen steadily. In 2010 it was reported that Ireland also had the lowest divorce rate in the EU – 0.7 per 1000 people. **Opening up marriage to same sex couples is just another change to marriage in modern times.**

- Marriage is about love, commitment and caring for our loved ones. **Lesbian and gay couples don't want to change that.** They simply want access to it. Introducing it would not fundamentally change marriage.
- International experience: **In countries and states where marriage equality has been introduced (see Appendix D) marriage has not changed or been damaged.** There are no less marriages taking place than before. Public perception of marriage has not been damaged and divorce rates have not increased. In fact in Massachusetts divorce rates have decreased since marriage equality was introduced, arguably because people saw that marriage is of value for people, families and society and worth fighting for.⁵

⁴ Most marriages did not take place in a Church until at least the 16th century. It was only in 1563 that the Roman Catholic Church made it mandatory for Roman Catholics to be married by a priest and it took at least another 100 years for the doctrines and practices of the Counter Reformation to be accepted in Ireland. According to the Catholic Encyclopedia the presence of a priest was not required at a wedding until 1545-1563 - the Council of Trent.

⁵ <http://williamsinstitute.law.ucla.edu/press/divorce-rates-lower-in-states-with-same-sex-marriage/>

- It is precisely because same sex couples value marriage that we are fighting for it. If marriage is worth fighting for, any couple who want to take that next step, make a lifetime commitment to each other and add their names to everything marriage means should be welcomed with open arms. **Marriage is about two committed adults who promise to love, cherish and protect each other. Same sex couples don't want to change that.**
- You may think that same sex couples are somehow 'different' from heterosexual couples, but they are more similar than you might think – **they have the similar hopes, concerns and desire to make the exact same commitment.** It's called marriage.
- 11 countries and 9 US states now allow for marriage equality, so definitions of marriage can and do evolve.
- The Oxford English Dictionary (and others) includes same sex couples in its definition of marriage (in some jurisdictions). The campaign for marriage equality is about truly **Irish values** – love, commitment and respect for family and kinship.

2. “Marriage is about religion” and “freedom of religion will be harmed”

- Providing marriage equality is about access to civil marriage (getting married in a registry office). **It’s not about getting married in a church.** Marriage itself pre-dates the religious sacrament, rite or ritual. It has been around for millennia. About 30% of all couples in Ireland get married in a registry office.⁶
- Providing marriage equality is not about forcing churches to marry same sex couples if they do not want to. **In the same way that after the introduction of divorce churches were not forced to re-marry divorced people. The free profession and practice of religion is afforded very strong protection under Article 44 of the Constitution.**⁷
- However some churches would like to be able to opt in and decide themselves whether to marry same sex couples. Churches and religious bodies such as the Unitarians and the Quakers have expressed their wishes to be able to do so.

3. “Civil partnership already exists, so marriage is unnecessary”

- Civil Partnership is not the same as marriage. It is a separate and unequal relationship status only available to same sex couples.
- Marriage is understood the world over as a serious relationship status. Civil partnerships / civil unions / domestic partnerships etc. are all new social constructs that change from country to country and state to state and very few people are sure what exactly they entail. **Irish civil partnerships are not recognised from country to country (to date only Northern Ireland, Scotland and the UK recognise them).** So whereas an Irish marriage is recognised and respected all over the world, an Irish civil partnership (and therefore any of the protections and rights associated with it) unfortunately is not.
- There are big differences between civil marriage and civil partnership in Ireland: Legislative, constitutional, policy, social stigma (separate and not equal). Our constitution is silent on whether marriage is between a man and a woman as in 1937 when it was written that was a given. **However only the family based on marriage is recognised and protected by our constitution and therefore all other families remain outside this constitutional protection.**

6 29% in 2009 CSO report <http://www.cso.ie/en/media/csoie/releasespublications/documents/vitalstats/2010/marriages10.pdf>

7 “See further, G. Hogan and G. Whyte (2003) *The Irish Constitution* (Butterworths: Dublin), Chapter 7.8 and E. Daly (2008) ‘Religious Discrimination Under The Irish Constitution: A Critique of the Supreme Court Jurisprudence’, 7 *Cork Online Law Review*, 28. The European Court of Human Rights will not compel countries to legislate for civil marriage equality. It has decided that it is a matter that should be resolved at national level: *Schalk and Kopf v Austria* and *Gas and Dubois v. France* (Application no 25951/07). The European Convention on Human Rights also provides strong protection for religious freedom (under Article 9). The European Court has emphasised that “[t]he autonomous exercise of religious communities is indispensable for pluralism in a democratic society” (*The Supreme Holy Council of the Muslim Community v Bulgaria* (2005) 41 EHRR 3, para 93-96). Any attempt to force a church or religious organisation to conduct same-sex marriages, contrary to the religious convictions of its members’, would therefore not only contravene the Constitution it would also violate Article 9.

Homophobic bullying is a scourge on Irish society. We are sending damaging messages to our young people by telling them that it is not ok to bully someone because they are (or they are perceived to be) gay, lesbian, bisexual or transgender whilst on the other hand reinforcing the message that LGBT people are not equal human beings because they cannot grow up, fall in love and marry the person they love just like anyone else. **Research in the U.S. shows that there is a direct relationship between the level of acceptance of lesbian and gay people and the level of legal equality, or in other words there is more anti-gay violence and stigma in places where there is less legal equality.**⁸

- **There are over 160 statutory differences between civil marriage and civil partnership.** These are listed and explained in our 'Missing Pieces report'⁹ and include:

The family home: 25 substantial differences in treatment between married couples and civil partners were identified in this important area.

- **Same sex couples' homes are not defined as 'family homes'.** Instead their homes are downgraded to the status of a 'shared home'.
- In the case of desertion a spouse in a married couple can apply to the court to dispense with the deserting spouse's consent to sell the family home. **No such protection is afforded to civil partners.**
- Housing relief grants are provided where a house is severely damaged by fire, flood or other tragedies. In assessing the level of grant the hardship endured by a spouse is taken into account. Not so for civil partners, their relationship doesn't exist as far as this State support is concerned.

Legal Procedures: 62 differences in treatment between married couples and civil partners were uncovered under this heading, many of which deal with procedures from formalising a relationship and for how a relationship can be dissolved in the event of breakdown.

- Engagement has a legal status and resulting rights, protections and obligations for heterosexual couples. **There is no equivalent status for civil partners.**
- Religious bodies are not legally permitted to register a civil partnership.
- Unlike marriage law, the courts cannot recognise foreign civil partnerships or same-sex marriages. Whereas heterosexual couples can apply to the courts for recognition, same-sex couples must wait for Ministerial approval to be given to their foreign marriage, which today is recognised as a civil partnership with lesser rights and recognition than that of opposite sex foreign married couples.

8 http://psychology.ucdavis.edu/rainbow/html/AP_06_pre.PDF

9 <http://www.marriageequality.ie/getinformed/missingpieces/missingpieces.html>

Parent and Child relationship: 25 substantial differences in treatment between married couples and civil partners were identified in this critical area such as:

- Civil partners cannot apply to jointly adopt (**even when it is the biological child of one of the partners whom they are raising together**)
- Guardianship rights have not been extended to civil partners. **Where a civil partner is not the biological or adoptive parent of a child there is no way to confer parental rights and responsibilities to that person**, regardless of how involved they are in the care, education and development of a child.
- In the event of a relationship breakup in a civil partnership there is no legal requirement for a court to take into account the needs of dependent children.
- Discrimination against children, based on their parents' sexuality is a day-to-day reality for thousands of children in Ireland today. **For a more detailed list of legal protections missing for children in same sex families see Appendix B.**

4. "Marriage is about procreation and children":

- Marriage is not just about children. **Marriage certificates are not issued in Ireland conditional upon couples having children.** Many couples do not have children e.g. older couples, couples with fertility issues and couples who decide not to. It doesn't make their marriages less valid. Indeed the Supreme Court has upheld married couples' right to use contraception to prevent procreation.¹⁰
- Many Irish people have children without getting married, some of them as cohabiting couples, including lesbian and gay parents who are already raising children in loving homes all over Ireland. The meaning of 'the family' has changed in Ireland over the years. Single parents, step-parents, grandparents, aunties and uncles, foster parents and lesbian and gay parents are all raising children as a family unit. **Today's reality is that many of us belong to diverse families.**
- **We have nothing to fear from children growing up with lesbian and gay parents.** 30 years of scientific research proves that children growing up with lesbian and gay parents turn out just fine and have found no significant developmental differences between them and children with heterosexual parents in their intelligence, psychological adjustment, social adjustment, popularity with friends, development of social sex role identity or development of sexual orientation.

¹⁰ McGee -v- The Attorney General [1974] I.R. 287.

Professor Sheila Greene, formerly of the Children’s Research Institute at Trinity College Dublin reviewed all the research in relation to outcomes for children of same sex couples and agrees that children in same sex families reach their developmental milestones and do just as well as children raised by opposite sex couples.¹¹

For more information on this research see Appendix A.

- Children in same sex families experience hardship and social exclusion because of lack of legal recognition and protections e.g. medical consent, school, hospitals. **Do we want to continue to discriminate against those children (even if we do not like their family forms) or do we want to change the law to give them equal protections?**

For further details on the legal difficulties faced by children in same sex families see Appendix B.

Children’s rights campaigners and organisations have called on Government to address the lack of legal rights for children in same sex families. **The Children’s Rights Alliance called on Government to fulfil its promise in the programme for government to address the anomalies and omissions in the Civil Partnership Act including those relating to children in their 2013 Report Card to Government.**¹²

The **Ombudsman for Children** made it clear in her advice on the Civil Partnership Bill, that the **“omission of robust protections for the children of civil partners will have real consequences for the young people concerned and it is in their interests that the law reflects and provides for the reality of their lives.”**¹³

UNICEF has stated that **“All people regardless of race, gender, religious belief or sexual orientation should be entitled to the same protection and privileges under the law. The protection of children is paramount at all times regardless of the parenting circumstances in which children may find themselves. Issues such as next of kin, custody, access and guardianship for children of same-sex unions should be clarified as a matter of urgency.”**

11 http://www.marriageequality.ie/download/pdf/voices_of_children_conference_report.pdf

12 http://www.childrensrights.ie/sites/default/files/submissions_reports/files/ReportCard2013.pdf

13 http://www.oco.ie/assets/files/publications/advice_to_government/Advice%20of%20Ombudsman%20for%20Children%20on%20Civil%20Partnership%20Bill%202009.pdf

We asked children with lesbian and gay parents for their opinions on the issue of marriage equality. We published two reports in 2010 called *Voices of Children* so that their opinions could be heard.¹⁴ What mattered most to these children was that their family relationships be recognised and protected, and that no other generation of children with lesbian, gay, bisexual or transgender parents be discriminated against the same way. You can read more from these children and watch a video of some of them talking on our website here <http://www.marriagequality.ie/getinformed/families/voc.html>

A recent poll found that over 2/3 (69%) of people in Ireland agree that being raised in a loving home by loving parents is a more significant factor for a child's well-being than being raised by a mother and father. (Millward Brown, September 2012).

Some people worry about children with lesbian and gay parents being bullied. Bullying is a terrible problem in Irish schools. We need to tackle it as a whole. The fact is that people can be cruel for a variety of reasons e.g. having red hair or a name that is different. As with all reasons behind bullying, education is key. But let's tackle the real causes of bullying, in this case homophobia, rather than incorrectly fixate on one of its symptoms.

Same-sex adoption is mainly about lesbian and gay mums and dads being eligible to apply to adopt the biological child of their partner, the child that they are already in fact parenting on a daily basis. Gay and lesbian individuals may apply to adopt, however as only married couples can apply to adopt, same sex couples are not eligible to apply – even in relation to the biological child or children of their partner.

With no mechanism for legal recognition of *de facto* parents (people who are parenting but not considered legal parents) children do not have any rights in relation to their *de facto* parent - even when that parent has raised them since birth or planned them before they were even conceived. As well as being unable to become a legal parent, a *de facto* parent cannot be appointed guardian by the court or even by agreement of the natural parents. This leaves their children without many of the protections available to other children e.g. access, maintenance, custody, inheritance.

¹⁴ <http://www.marriagequality.ie/getinformed/families/voc.html>

In Ireland the vast majority of adoptions are inter-country adoptions. Domestic adoption numbers are made up of 'family adoptions' where a family member or members adopt a relative child and 'non-family adoptions' where a child unrelated to the applicants is adopted. The numbers of domestic adoptions are very small – 39 in 2011.¹⁵ **Opening up adoption to lesbian and gay couples would mean their children could have a legal relationship with both of their parents.**

In relation to the very small number of domestic adoptions it is important to note that **couples undergo intense scrutiny and examination by trained professionals and are placed with would-be parents on the basis of what is in the best interests of that child.** We approve of these procedures and ask only that same-sex couples be allowed to apply for consideration to be adoptive parents in the same way that opposite-sex married couples may, in the best interests of the children.

Gay and lesbian individuals and couples are already fostering children all over Ireland. Some of these children are with their foster parents long-term. If their parents could marry, they could apply to adopt their children and become their legal parents.

At the **Irish Association of Social Workers** AGM in April (2009), a motion was passed "supporting the government's intent to legislate for gay and lesbian relationships and calling on the government to implement without delay legislation for full marriage equality for gay and lesbian relationships".

In the U.S. the largest professional organisations who deal with children's welfare and rights have come out in support of equality for children in same sex families including the **American Academy of Pediatrics (AAP)**, the **American Psychological Association (APA)**, the **National Association of Social Workers (NASW)**, the **American Psychiatric Association (APA)**, the **American Bar Association (ABA)**, the **American Medical Association (AMA)** and many more.¹⁶

"Equality for the children of lesbian, gay, bisexual and transgender parents will happen and so will equality for their parents. It has to happen and it will happen, so don't give up the fight."

Fergus Finlay, CEO, Barnardos, Dublin.¹⁷

For a brief summary of what some other Irish organisations have said about equal marriage rights see Appendix E.

¹⁵ <http://www.aai.gov.ie/attachments/article/32/AdoptionAnnRep2011.pdf>

¹⁶ <http://www.marriageequality.org/supporters>

¹⁷ At Voices of Children conference, 8th September 2010 page 9 of conference report http://www.marriageequality.ie/download/pdf/voices_of_children_conference_report.pdf

WHAT WE ARE ASKING THE CONSTITUTIONAL CONVENTION TO DO

The Government could put the issue of providing for marriage equality to the people of Ireland in a referendum. If this is passed then civil marriage would be opened up to committed same sex couples and would be beyond any legal challenge. **It would provide certainty to the thousands of lesbian and gay people throughout Ireland who wish to marry the person they love.**¹⁸ We are suggesting that a referendum could ask Irish people to decide whether to insert a clause in the Constitution after article 41.3.1 which provides:

“No two people may be lawfully prevented from marrying each other by reason of their gender.”

This would simply mean that gender cannot be used to discriminate in relation to access to marriage. A bill to amend the Constitution could be accompanied by ones that amend the Civil Registration Act, 2004 and the Civil Partnership Act, 2010.

We are therefore asking members of the Constitutional Convention to recommend that the Government take immediate action to provide for same sex marriage by holding a referendum in which this issue is put to the people of Ireland.

The time is now. Irish people are ready to respect and protect diverse families such as those made up of same sex couples with and without children. **We are all part of different kinds of families. You have the power to let the people change Ireland for the better.**

We are delighted the Government included marriage equality as an issue to be discussed at the Constitutional Convention. The fact that marriage equality has been included on the agenda in the first place demonstrates the importance of recognising this issue and discussing it as part of our future in modern Ireland. This Convention is a huge opportunity for us as a country to take the next step as a modern, democratic country that has respect for diversity and that believes in equality. **The Constitutional Convention is our chance as a nation to further enshrine those essential Irish values of justice, equality, fairness and respect in the Constitution.**

“The exclusion of same-sex couples from the benefits and responsibilities of marriage, accordingly is not a small and tangential inconvenience ...it represents a harsh if oblique statement by the law that same-sex couples are outsiders, and that their need for affirmation and protection of their intimate relations as human beings is somehow less than that of heterosexual couples...”

Justice Sachs of the South African Constitutional Court.¹⁹

18 For a short look at other routes to achieving marriage equality see Appendix G.

19 Minister of Home Affairs and Another v Fourie and Another; Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others, [2005] ZACC 19 is a landmark decision of the Constitutional Court of South Africa in which the court ruled that same-sex couples have a constitutional right to marry. The judgment, authored by Justice Albie Sachs and delivered on 1 December 2005, gave Parliament one year to pass the necessary legislation. As a result the Civil Union Act came into force on 30 November 2006, making South Africa the fifth country in the world to open up marriage to same-sex couples.

CONCLUSION

Providing for marriage equality will not change marriage, which is about love, commitment, caring for and protecting loved ones. **Opening up civil marriage to loving committed same sex couples is about respecting the reality of diversity amongst Irish families today.** It's about accepting that lesbian and gay people have the same hopes and dreams as everyone else and for most of us that involves falling in love, settling down and spending the rest of our lives with someone else – supporting each other through the hard times as well as celebrating the joyful ones. **It's about recognising that if marriage is good for people, families and society, then allowing more couples marry will be good for them, their families and for Irish society in general.**

Marriage is about the love and commitment between two people with or without children. There are lesbian and gay mums and dads already parenting children all over Ireland and we have nothing to fear about this. Thirty years of research outlined in this submission proves that children raised with LGBT parents turn out just fine. **Allowing these parents marry will bring a host of legal protections and constitutional recognition for their families, something that the children in these families say is very important to them.**

With 74% support amongst Irish people, providing for marriage equality would be a popular and democratic measure and would maintain Ireland's reputation as a progressive country that respects and protects lesbian, gay, bisexual and transgender peoples' lives.

We are therefore asking members of the Constitutional Convention to recommend that the Government take immediate action to provide for same sex marriage by holding a referendum in which this issue is put to the people of Ireland.

Now is the time for marriage equality in Ireland. This Convention is the opportunity for us as a country to take the next step as a modern, democratic country that has respect for diversity and that believes in equality for all families. **This is our opportunity to cherish and protect diverse family forms such as same sex couples and families, and to ensure that they are treated equally under the law by enshrining marriage equality in the Irish Constitution.**

APPENDIX A:

Outline of Research on Same Sex Parenting and the Outcomes for Their Children

Introduction

Recent census figures show that many households in Ireland now take diverse family forms and these include families with same sex parents. Many lesbian, gay and bisexual (LGB) adults are also parents and while the 2011 census figures recorded only a small number of 230 same sex couples had children, the constraints in data collection and the reluctance of some LGB people to identify themselves in the census, means this number is likely to be a considerable under-estimate of the actual population.

Research on the Outcomes for Children with Same Sex Parents

For four decades researchers have been comparing the development of children with gay and lesbian parents and children with heterosexual parents. These studies, including longitudinal research from the US stretching over 25 years, have found no significant developmental differences between the two groups in their intelligence, psychological adjustment, social adjustment, popularity with friends, development of social sex role identity or development of sexual orientation.

The most recent study in this area comes from Cambridge University's Centre for Family Research. This research into the experiences of adoptive families headed by same-sex couples suggests that children adopted by gay or lesbian couples are just as likely to thrive as those adopted by heterosexual couples. It also reveals that new families cope just as well as traditional families with the big challenges that come with taking on children who have had a poor start in life.

It is also worth noting that while research in an Irish context is scarce, a small scale study undertaken by Marriage Equality, provides valuable insight into the experience of children with LGB parents living in Ireland. This research entitled "The Voices of Children" found that the children had experienced significant support from family, friends, within the LGBT community and progressive schools. However lack of legal recognition and protection of their families had caused considerable problems and frustration for them. A more recent and larger Irish study into the experiences of LGBT parents confirms these findings, with almost 50% of parents reporting that they had experienced discrimination in the past 5 years, citing lack of legal recognition as the main cause of discrimination.

In response to the body of research evidence which now exists, many medical and child welfare bodies have adopted formal policies recognising that sexual orientation is not relevant to parental ability. These professional bodies have urged their members to be cognitive of this research evidence that demonstrates that LGB people are just as capable of being good parents as heterosexual people and that their children are just as likely to be healthy and well-adjusted. In a U.S. and a U.K. context professional bodies include; the American Psychological Association, the American Academy of Paediatrics, the National Association of Social Workers and the Royal College of Nursing.

In an Irish context the Irish Association of Social Workers (IASW) and the Irish Institute of Mental Health Nurses, have both issued guidelines to this effect. The IASW in its guidelines call on social workers working with gay and lesbian parent families and those involved in the assessment of LGB adults as potential foster or adoptive parents to be particularly mindful of this body of research. A summary of the main research referred to in these guidelines is outlined below.

SUMMARY OF RESEARCH ON SAME-SEX PARENTING

The Impact of Gay Parenting on Children's Development:

- Brewaeys, A., Ponjaert, I., Van Hall, E.V. & Golombok, S. (1997). Donor insemination: child development and family functioning in lesbian mother families. *Human Reproduction*, 12(6): 1349-1359.
- Chan, R.W., Raboy, B. & Patterson, C.J. (1998). Psychosocial adjustment among children conceived via donor insemination by lesbian and heterosexual mothers. *Child Development*, 69(2): 443-457.
- Chan, R.W., Brooks, R.C., Raboy, B. & Patterson, C.J. (1998). Division of labour among lesbian and heterosexual parents: Associations with children's adjustment. *Journal of Family Psychology*, 12(3): 402-419.
- Flaks, D.K., Ficher, I., Masterpasqua, F. & Joseph, G. (1995). Lesbians choosing motherhood: a comparative study of lesbian and heterosexual parents and their children. *Developmental Psychology*, 31(1): 105-114.
- Fulcher, M., Chan, R.W., Raboy, B. & Patterson, C.J. (2002). Contact with grandparents among children conceived via donor insemination by lesbian and heterosexual mothers. *Parenting: Science and Practice*, 2(1): 61-76. *The Impact of Gay Parenting on Children's Development:*
- Hotvedt, M. & Barclay Mandel, J. (1982). Children of lesbian mothers. In *Homosexuality: Social, Psychological, and Biological Issues*, Eds. Paul, W., Weinrich, J., Gonsiorek, J. & Hotvedt, M., p.275-284. Beverly Hills, CA: Sage.
- Huggins, S.L. (1989). A comparative study of self esteem of adolescent children of divorced lesbian mothers and divorced heterosexual mothers. *Journal of Homosexuality*, 18(1&2): 123-135.
- Green, R., Barclay Mandel, J., Hotvedt, M., Gray, J. & Smith, L. (1986). Lesbian mothers and their children: A comparison with solo parent heterosexual mothers and their children. *Archives of Sexual Behaviour*, 15(2): 167-184.
- Golombok, S., Spencer, A. & Rutter, M. (1983). Children in lesbian and single-parent households: psychosexual and psychiatric appraisal. *Child Psychology and Psychiatry*, 24(4): 551-569.
- Golombok, S., Perry, B., Burston, A., Murray, C., Mooney-Somers, J. Stevens, M. & Golding, J. (2003). Children with lesbian parents: a community study. *Developmental Psychology*, 39(1): 20-33.
- Kirkpatrick, M., Smith, C. & Roy, R. (1981). Lesbian mothers and their children: a comparative survey. *American Journal of Orthopsychiatry*, 51(3): 545-551.
- MacCallum, F. & Golombok, S. (2004). Children raised in fatherless families from infancy: a followup of children of lesbian and single heterosexual mothers at early adolescence. *Journal of Child Psychology and Psychiatry*, 45(8): 1407-1419.
- Patterson, C., Hurt, S. & Mason, C. (1998). Families of the lesbian baby boom: children's contacts with grandparents and other adults. *American Journal of Orthopsychiatry*, 68(3): 390-399.
- Patterson, C. (1994). Children of the lesbian baby boom: behavioral adjustment, self-concepts, and sex-role identity. In *Contemporary Perspective on Lesbian and Gay Psychology: Theory Research & Application*, Eds. Green, B. & Herek, G., p157-175. Thousand Oaks, CA: Sage.

- Patterson, C.J. (1992). Children of lesbian and gay parents. *Child Development*, 63: 1025– 1042.
- Tasker, F. (2005). Lesbian mothers, gay fathers and their children: a review. *Journal of Developmental & Behavioral Pediatrics*, 26(3): 224-240.
- Tasker, F. & Golombok, S. (1995). Adults raised as children in lesbian families. *American Journal of Orthopsychiatry*, 65(2): 203-215.
- Vanfraussen, K., Ponjaert-Kristoffersen, I. & Brewaeyts, A. (2002). What does it mean for youngsters to grow up in a lesbian family created by means of donor insemination? *Journal of Reproductive and Infant Psychology*, 20(4): 237-252.
- Wainright, J.L., Russell, S.T. & Patterson, C.J. (2004). Psychosocial adjustment, school outcomes and romantic relationships of adolescents with same sex parents. *Child Development*, 75(6): 1886-1898.

The Quality of Parenting:

- Bigner, J.J. & Jacobsen, R.B. (1992). Adult responses to child behavior and attitudes toward fathering: gay and nongay fathers. *Journal of Homosexuality*, 23(3): 99-112.
- Bigner, J.J. & Bozett, F.W. (1990). Parenting by gay fathers. In *Homosexuality and Family Relations*, eds. Bozett, F.W. & Sussman, M.B., p155– 175. New York: Harrington Park Press.
- Bigner, J.J. & Jacobsen, R.B. (1989). Parenting Behaviors of Homosexual and Heterosexual Fathers. *Journal of Homosexuality*, 18(1&2): 173-186.
- Bos, H.M.W., Van Balen, F. & Van Den Boom, D.C. (2004). Experience of parenthood, couple relationship, social support and child-rearing goals in planned lesbian mother families. *Journal of Child Psychology and Psychiatry*, 45(4): 755-764.
- Brewaeyts, A., Ponjaert, I, Van Hall, E.V. & Golombok, S. (1997). Donor insemination: child development and family functioning in lesbian mother families. *Human Reproduction*, 12(6): 1349-1359.
- Golombok, S., Tasker, S. & Murray, C. (1997). Children raised in fatherless families from infancy: family relationships and the socio-emotional development of children of lesbian and single heterosexual mothers. *Journal of Child Psychology and Psychiatry*, 38(7): 783-791.
- Golombok, S., Perry, B., Burston, A., Murray, C., Mooney-Somers, J. Stevens, M. & Golding, J. (2003). Children with lesbian parents: a community study. *Developmental Psychology*, 39(1): 20-33.
- Perrin, E.C. (2002). Technical report: co-parent or second-parent adoption by same-sex parents. *Pediatrics*, 109(2): 341 -344.
- Impact on Children's Gender and Sexual Development:
- Bailey, M., Bobrow, D., Wolfe, M. & Mikach, S. (1995). Sexual orientation of adult sons of gay fathers. *Developmental Psychology*, 31: 124-129.
- Golombok, S. & Tasker, F. (1996). Do parents influence the sexual orientation of their children? Findings from a longitudinal study of lesbian families. *Developmental Psychology*, 32(1): 3-11.
- Hoeffler, B. (1981). Children's acquisition of sex role behaviour in lesbian-mother families. *American Journal of Orthopsychiatry*, 51(3): 537-644.
- Lamb, M.E. (1999). Parental behavior, family processes and child development in non-traditional and traditionally understudied families. In *Parenting and Child Development in Nontraditional Families*, ed. Lamb, M.E., p5-6. Mahwah, NJ: Lawrence Erlbaum.

- Patterson, C. & Chan, R. (2004). Gay Fathers. In *The Role of the Father in Child Development*, ed. Lamb, M., p397-416. New York: John Wiley.
- Russell, G. (1999). Primary caregiving fathers. In *Parenting and Child Development in Nontraditional Families*, ed. Lamb, M.E., p72-73. Mahwah, NJ: Lawrence Erlbaum.
- Stacey, J. & Biblarz, T.J. (2001). (How) does the sexual orientation of parents matter? *American Sociological Review*, 66: 159-183.

APPENDIX B:

Legal gaps in Civil Partnership Act - parent and child relationships*

“It should be borne in mind that this is not a hypothetical problem. The omission of robust protections for the children of civil partners will have real consequences for the young people concerned and it is in their interests that the law reflect and provide for the reality of their lives”

Ombudsman for Children, July 2010.

- Non-recognition of the relationship between parents and children being raised in same-sex headed families, including the deliberate omission of existing provisions in family law which recognise non-biological children (for example step children) as dependents within married families (e.g. in the Shared Home Protection Act – provision for the accommodation needs of a dependent child or children were omitted) .
- Adoption - civil partners cannot apply to adopt jointly as a couple, even if the proposed adoption application were in relation to a same-sex parent wishing to adopt their partner’s biological child.
- Guardianship - Guardianship rights have not been extended by the Civil Partnership Act nor has any other equivalent regime been introduced. Therefore, the situation remains that there is no way to confer parental rights or responsibilities on a civil partner who is not the biological or adoptive parent of a child but is in fact parenting a child or children within their family unit.
- Custody & Access - The right to make an application to the court regarding custody has not been extended to include a civil partner who is not the biological parent of the child, the process of applying for access has not been brought into line with access applications by parents and as such can be very complicated. .
- Maintenance - references to dependent children are omitted from the provisions governing maintenance in the Civil Partnership Act. A maintenance order cannot be made against a civil partner, who is not the biological parent, for the support of a dependent child.
- Dissolution of a Civil Partnership - No requirement that proper provision has been made for any dependent children exists in respect of dissolution of civil partnership and again the court is not required to ensure that any proper provision has been made for any children who are dependent on the civil partner.
- Inheritance - The Civil Partnership Act does not extend inheritance rights to a non-biological child of a deceased civil partner parent. This means that such children are excluded from the rules of

inheritance that apply where a person dies without making a valid will. Where a parent does leave a will, the right to challenge it for failing to provide adequately for a child does not apply to non-biological children even when the deceased civil partner acted in loco parentis.

- Research - In research carried out by Marriage Equality, Voices of Children, the children involved who had been raised in same-sex headed households, provided many real life examples of how the lack of legal recognition of their relationship with their non-biological parents, had significant impact on their lives. In the end what mattered most to the children in this study, was that their family relationships be recognised and protected, and that no other generation of children with LGBT parents, should experience the pervasive homophobia that they had experienced.

*These anomalies are taken from the 'Parent and Child' chapter of the 'Missing Pieces' report published by Marriage Equality; October 2011.

APPENDIX C:

Background to Marriage Equality – who are we and what do we do?

Marriage Equality is a not for profit, single issue, national grassroots advocacy organisation whose goal is to achieve equality for lesbian, gay, bisexual and transgender (LGBT) people in Ireland through the extension of civil marriage rights to same-sex couples.

Marriage Equality's vision is of a fairer more inclusive Ireland in which same sex couples, their families and their children enjoy equality.

In order to realise our vision, Marriage Equality's mission is to achieve equal access to civil marriage for same sex couples in Ireland.

In order to accomplish our mission, Marriage Equality has three key aims:

1. to educate the general public, the legal community, opinion makers and legislators about the need for equal rights for same sex couples
2. to mobilise support for legislation that will enable same sex couples to marry and establish legal recognition of children in LGBT families
3. to monitor and encourage legal actions at national and European levels which support the granting to same sex couples the equality of status in Ireland that they already enjoy in a number of other European Union member states and globally.

It's important to stress that we are seeking access to civil marriage. Civil marriage is regulated by the State. Wedding ceremonies take place in a registry office or approved venue. This has nothing to do with religious marriage or getting married in a church. We are not seeking to force religious institutions to marry same sex couples. Just as divorce legislation did not force churches to remarry

divorced people, legalising marriage equality will not require churches to marry same sex couples – though several religious institutions (Unitarian Church, Quakers, etc) would be happy to do so.

Marriage Equality has been funded to date by community and grassroots fundraising and by philanthropic organisations such as Atlantic Philanthropies and The Community Foundation for Ireland. It is managed by a Board of Management and staffed by three employees and a team of volunteers.

Board Members: Grainne Healy (Chair), Orla Howard (Deputy Chair), Ailbhe Smyth, Ross Golden Bannon, Darina Brennan, Ronan Farren, Kieran O'Brien, Clare O Connell, Anna Mac Carthy, Justine Quinn, Judy Walsh.

Staff Members: Moninne Griffith (Director), Dawn Quinn (administrator and volunteer manager), Kirsten Fjoser (Communications and Fundraising officer).

APPENDIX D:

Where can same sex couples get married?

Eleven countries have so far opened up marriage to lesbian and gay couples:

- **NETHERLANDS:** In April 2001 became the first country in the world to legalise marriage equality. Includes the right to adoption.
- **BELGIUM:** same sex couples in Belgium won the right to marry in June 2003 and in April 2006 parliament voted into law a bill allowing same sex couples to adopt children.
- **SPAIN:** In July 2005 became the third member of the European Union to pass a law to allow marriage equality. Gay and lesbian couples can adopt children.
- **CANADA:** The law allowing same sex couples to marry and adopt children came into force in July 2005.
- **SOUTH AFRICA:** In November 2006 became the first African country to legalise marriage equality.
- **NORWAY:** A January 2009 law allows same sex couples to marry and adopt children and permits lesbians to be artificially inseminated.
- **SWEDEN:** Sweden's same sex couples have been allowed to wed in religious or civil ceremonies since May 2009.
- **PORTUGAL:** Under a June 1, 2010 law Portugal legalised marriage equality, while excluding the right to adoption.
- **ICELAND:** Prime Minister Johanna Sigurdardottir married her long-time partner in June 2010 as a new law legalising marriage equality came into force.
- **ARGENTINA:** On July 15, 2010 a bill that legalises marriage equality came into force -- a Latin American first. Same sex couples can adopt children.
- **DENMARK:** Marriage equality became legal in Denmark on 15 June 2012, after the Danish parliament voted on 7 June in favour of gender-neutral marriage, including marriages in the Church of Denmark.

Two countries allow marriage on part of their territory:

The United States (9 States) Connecticut (2008), Iowa (2009), Massachusetts (2004), Maryland (2012), Maine (2012), New Hampshire (2010), New York (2011), Vermont (2009) and Washington State (2012), and in District of Columbia aka Washington DC (2009).

Mexico in the federal capital.

Many other countries have adopted legislation on civil partnerships, notably France, Germany, Finland, New Zealand, Britain, Ireland, the Czech Republic, Switzerland, Uruguay and Colombia.

APPENDIX E:

What some other organisations working with families, equality and human rights have said on the issue of marriage equality:

- Aim Family Services: 'AIM supports equality in relationships and calls on the government to ensure that equality and fairness is extended to all our children.'
- Amnesty International Ireland: 'Discrimination on the grounds of sexual orientation is a human rights violation.'
- Free Legal Advice Centres: 'By not extending equal marriage rights to gay and lesbian people who wish to marry, they are being discriminated against and being denied their fundamental human rights and equal treatment in the law with heterosexual people.'
- Irish Council for Civil Liberties: 'The ICCL is very happy to be associated with the work of Marriage Equality and strongly believes that only the introduction of civil marriage for same-sex couples will achieve full equality of status with opposite-sex couples'
- Nasc: 'NASC, the Irish Immigrant Support Centre, fully supports Marriage Equality's campaign to secure the right to civil marriage for same-sex couples.'
- National Women's Council of Ireland: 'The NWCI calls on the Government to legislate for equal access to civil marriage for lesbian and gay couples as a matter of equality and fairness...'
- Union of Students in Ireland - In April 2012, the USI Congress voted 'to vehemently campaign on the full equalisation of rights regardless of sexual orientation, for full and equal marriage rights, full and equal adoption rights and for this union to recognise lesbian, gay, bisexual and transgender (LGBT) members as full and equal members of society in recognition of the rights laid out above.'

APPENDIX F:

Real stories: Why Irish people want marriage equality

To hear from real people and couples why they want marriage equality to be provided for in Ireland, please visit our website at <http://www.marriageequality.ie/ourvoices/couples.html>

APPENDIX G:

Other routes to marriage equality which are or can be pursued

The Courts: Senator Katherine Zappone and Dr Ann Louise Gilligan are currently in the process of trying to achieve recognition for their Canadian marriage in the Irish courts. In 2006, the High Court found that although the Irish Constitution did not define marriage as between a man and a woman, it was implied [Zappone & Gilligan v. Revenue Commissioners [2008] 2 IR 417]. Therefore the Irish Revenue Commissioners didn't breach the Constitution in refusing to recognise Katherine and Ann Louise's Canadian marriage. The Court didn't find that providing for marriage equality would run counter to the Constitution; it found that the Constitution could not be used to compel recognition of a same-sex marriage. The case was appealed to the Supreme Court, but before it was heard, Zappone and Gilligan issued a fresh challenge in the High Court contesting two relevant pieces of legislation which took effect after the original papers were lodged.

"...[To] the young people who right this very minute are preparing to marry... Can you imagine what it would be like if you were not allowed to marry the person you choose to love? That is what the judge has said to us."

Katherine Zappone

The Irish Constitution does not define marriage as being between a man and a woman, and so Marriage Equality believe that the Constitution's definition of "the family" could evolve to include same-sex relationships. The Constitution is considered to be a living document, open to re-interpretation by the judges in the Supreme Court, to reflect the changing values of Irish society. It is, therefore, open to change. **No date has been set for this new High Court hearing to date.**

The Oireachtas: Opinion is divided as to whether marriage equality could be delivered through ordinary legislation or whether we require a referendum.

The Civil Registration Act, 2004 was the first piece of legislation to define marriage as being between a man and a woman on the Irish statute books. Marriage Equality believes that this legislation could be amended to define marriage in gender neutral terms. We and many others see no constitutional barrier to providing for marriage equality. We do not believe that providing full equality for same-sex couples is unconstitutional. The Irish Constitution upholds equality for ALL its citizens.

However, the last Attorney General in his advice to Government on the subject of Civil Partnership considered that a referendum would be required to change the constitution to introduce marriage equality in the Irish legal system. In his view marriage equality legislation could be interpreted by the Irish Courts as unconstitutional which would mean it was not lawful. Based on this advice it appears that the current Government's preferred approach is to ask the people of Ireland to decide whether or not to change the Constitution to expressly allow for marriage.